U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

H2

PUBLIC COPY

[redacted]

FEB 02 2004

FILE: [redacted] Office: SAN JOSE, CA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, San Jose, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Peru who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his parents and extended family.

The acting district director concluded that the applicant failed to establish that extreme hardship would be imposed upon his U.S. citizen parent if his waiver were denied. The application was denied accordingly. *See* Decision of Acting District Director, dated February 5, 2003.

On appeal, counsel asserts that the Immigration and Naturalization Service [now Citizenship and Immigration Services (CIS)] erred in denying the waiver. Counsel contends that the applicant has established that his family will suffer extreme and unusual hardship if he is denied the waiver of inadmissibility. Counsel further asserts that the applicant has been a person of good moral character and that the applicant will suffer as a result of removal to Peru.

The record includes two statements from the applicant's father, dated October 21, 2002 and February 27, 2003, respectively; a copy of the naturalization certificate issued to the applicant's father; copies of medical records for the applicant's father; a letter from the applicant's mother, dated February 25, 2003; a copy of the naturalization certificate issued to the applicant's mother; letters of support from the applicant's siblings; copies of the U.S. birth certificates and identification cards for the applicant's two younger siblings; a copy of the naturalization certificate issued to the applicant's older sibling; an affidavit of the applicant, dated February 22, 2003; copies of identification cards for the applicant; letters verifying the employment of the applicant and the applicant's father; copies of financial documents for the family and copies of relevant court documents relating to the applicant's criminal record. The entire record was considered in rendering a decision on this application.

The record reflects that:

On July 30, 1998, the applicant was convicted of the misdemeanor offense of Disorderly Conduct: Prostitution. The applicant was sentenced to two years probation, 10 days in jail and payment of a fine for the offense.

On July 6, 2001, the applicant was convicted in the Santa Clara County Superior Court for the offense of Lewd and Lascivious Acts with a Child, a violation of section 288(c)(1) of the Penal Code of California. The applicant was sentenced to a term of imprisonment of one year.

The AAO notes that counsel's brief on appeal references gambling. *See* Legal Brief Appeal Denial I-601 Reasons Applicant & Family Would Suffer Extreme Hardship if Denied Adjustment of Status, dated March 6, 2003 at 4. The AAO finds no mention of gambling in the applicant's criminal record. Further, the brief submitted by counsel states that the applicant "has been convicted of solely one crime." *Id.* This statement is erroneous.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

> (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . . .
>
> (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999), the Board of Immigration Appeals (BIA) provides a list of factors it deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Counsel submits the affidavits of the applicant's family as evidence of extreme hardship. The applicant's father states that the applicant is "practically the head of the family I don't think we will be able to survive without his income." *See* Letter from [redacted] dated February 27, 2003. The record does not support this assertion. The record indicates that the applicant's father and mother are both employed with the applicant's father earning between $35,000 to $50,000 per year from his business. *See* Letter from [redacted] Owner of [redacted] Maintenance Services, dated September 25, 2001. While the applicant's parents indicate that the applicant assists them in operating their respective businesses, the record does not establish that the applicant is the only person able to do so. The record is devoid of evidence substantiating the broad claim of the applicant's mother that "without [the applicant's] financial support [the] family would suffer a tremendous financial set back." *See* Affidavit of [redacted] dated February 25, 2003.

Counsel contends that the applicant's father suffers from undiagnosed gastrointestinal problems and relies on the applicant for care. The record contains medical reports for the applicant's father, but does not demonstrate that he has been diagnosed with an identifiable disease. The record does not indicate the type or extent of care that the applicant's father requires for his ailments. The record indicates that the applicant's

father maintains employment and is therefore able to function independently. The record does not establish that the applicant currently provides care or is uniquely equipped to provide such care to his father.

The applicant's parents emphasize that the applicant assists his younger siblings with their schoolwork. *Id.* The AAO notes that potential hardship imposed on the applicant's siblings is irrelevant to waiver proceedings under section 212(h) of the Act. The AAO recognizes that the applicant's parents are not fluent in the English language, however the record does not establish that their other adult child or another individual cannot fill the role that the applicant currently plays in his younger siblings' upbringing.

Counsel indicates that relocation to Peru would be a hardship for the applicant, as unemployment conditions in Peru would prevent him from obtaining employment. *See* Affidavit of [redacted] dated February 22, 2003. As indicated previously, any hardship to be suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's parents will endure hardship as a result of separation from the applicant. However, their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

A review of the documentation in the record reflects that the applicant has failed to show that his U.S. citizen parents would suffer extreme hardship if his waiver application were denied. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.